PRIVY COUNCIL REPORTS

MALAYAN CREDIT LIMITED v. JACK CHIA-MPH LIMITED

[P.C. (Lord Keith of Kinkel, Lord Brandon of Oakbrook, Lord Brightman, Lord Mackay of Clashfern and Sir Denys Buckley) December 9 & 10, 1985 & February 3, 1986]

[Privy Council Appeal No. 33 of 1984]

Practice and Procedure – Tenants in common in unequal shares – Application for partition or sale – Order of sale made – Costs – Supreme Court of Judicature Act (Cap. 15), First Schedule, para. 3.

Land Law – Lease – Tenants in common in unequal shares – Order of sale – Supreme Court of Judicature Act (Cap. 15), First Schedule, para 3.

The United Overseas Land Ltd. on November 30, 1979 granted a lease on the 7th floor of the Malayan Credit House to the appellants and the respondents. The question raised in this case was whether the appellant and respondent companies were beneficially entitled to the lease as tenants in common in equal shares or as tenants in common in unequal shares. The High Court held that their shares were unequal and it refused an order for sale of the lease. On appeal the Court of Appeal held that their shares were equal and ordered the lease to be sold (see [1986] 1 M.L.J. 366). The appellants appealed.

Held: (1) the payment of rent and service charge in unequal shares, the payment of the stamp duty and the survey fee in unequal shares and the unequal contributions to the deposit payable under the terms of the lease which was to be outstanding for the whole period of the lease are comparable to the payment of purchase money in unequal shares. All the circumstances point decisively to the inference that the parties took the premises in equity as tenants in common in unequal shares;

(2) the Court of Appeal was, however, right in holding that a partition of the premises was inappropriate and that they should be sold by order of Court under the Supreme Court of Judicature Act;

(3) the respondent company should pay to the appellant company one half of its costs throughout the proceedings.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

Leolin Price Q.C. (*Sian Thomas* and *M. Karthigesu* with him) for the appellant.

Colin Ross-Munroe Q.C. (*Simon Elias* with him) for the respondent.

Cur. Adv. Vult.

Lord Brightman (delivering the Judgment of the Board): This appeal from the Court of Appeal of the Republic of Singapore raises the question whether the appellant and respondent companies are beneficially entitled to a lease of business premises as tenants in common in equal shares or as tenants in common in unequal shares. The High Court held that their shares were unequal. The Court of Appeal came to the opposite view and held that their shares were equal. A subsidiary question is whether the Court of Appeal was right to order a sale of the lease. This relief had been refused to the respondent company by the High Court.

In March 1976 Malayan Credit Properties Pte. Limited ("the Property Company"), acquired an office block known as Malayan Credit House in the district of Claymore, Singapore. The Property Company was a wholly owned subsidiary of Malayan Credit Limited ("the Credit Company"), which is the appellant before the Board. The Credit Company thereafter went into occupation of the whole of the 7th floor as tenant of the Property Company.

At a later date Jack Chia-MPH Limited ("the Chia Company"), of which Mr. Jack Chia was chairman, bought a substantial shareholding in the Credit Company. Thereafter, Mr. Jack Chia became a director of the Credit Company and eventually chairman of the Board, and three nominees of the Chia Company also became directors. The Chia Company is the respondent to the appeal.

In 1979, the Board of the Credit Company decided that Malayan Credit House should be sold, since it was contributing no profits to the group. A board meeting of the Credit Company was held on August 11, 1979 to consider a number of matters, including a proposed sale of the premises on the terms that the office space presently occupied by the Credit Company should be leased back by the purchaser. This particular sale proved abortive, but the board went on to consider the occupancy of the 7th floor and resolved as follows:

> "The Board approved of the arrangement for Jack Chia-MPH Limited to share the office premises at 7th Floor, Malayan Credit House. It was agreed that Jack Chia-MPH Limited be charged for the area utilized by them, which is to exclude the Managing Director's and Board Room. Messrs. Jack Chia, Donald Chia, Robert K. Booker and Wee Hock Ho who are also directors of Jack Chia-MPH Limited abstained from the above discussion. The Board was informed that Jack Chia-MPH Limited would be moving into the premises on or about October 1, 1979."

The next meeting of the board of the Credit Company was held on August 31, 1979 with Mr.

Jack Chia in the chair. The board approved the proposed sale of Malayan Credit House to United Overseas Land Limited ("United Overseas"), at $15m. The minutes of the previous board meeting were approved, subject to minor alterations.

On the same day a Memorandum of Agreement was made between the Property Company, United Overseas, the Credit Company and the Chia Company, providing for the sale to United Overseas of Malayan Credit House at the price mentioned. This agreement stipulated that United Overseas should grant to the Credit Company and the Chia Company a lease of the 7th Floor expressed to contain an area of 5,786 sq. ft. or thereabouts, for a period of five years renewable for a further two years in the terms of the annexed form of lease. It also provided for a further extension of three years. Their Lordships will refer more fully to this agreement and to the lease at a later stage. For present purposes it is sufficient to say that the monthly rent was to be $7,696 and the service change $2,960, totalling $10,656, payable in advance.

On October 11, 1979 there came into existence a professional drawing bearing the legend "Project: Proposed Renovation Work at 7th Floor, Malayan Credit House for M/s MCL and JC-MPH. Drawing Title: Record of Furniture Layout". This depicted the 7th Floor as partitioned or intended to be partitioned. Their Lordships will refer to this as "the Plan".

Shortly thereafter there also came into existence three closely written pages of calculations relating to the 7th floor. The document is headed "Malayan Credit Group". It is divided into three so-called Items:

Item I refers expressly to the Plan. The Item is divided into three parts. Part (A) is headed "Malayan Credit Group", followed by sub-headings descriptive of each space allocated to the Credit Company, *i.e.*, Chairman's Office, Chairman's Secretary's Office, Board Room, "T.A.S." Room, Rooms 6 to 10, Computer Room, Vault and General Office. These spaces are named on the Plan. Against each space there is a meticulous calculation of its area in square feet. Part (B) is headed "Jack Chia-MPH Group", followed by sub-headings descriptive of each space allocated to the Chia Company *i.e.*, Rooms number 1 to 5, and General Office, again with meticulous calculations of area. Part (C) is headed "Common area shared between MC and JC-MPH Group" consisting of Reception area and Kitchen, again with meticulous measurements.

Item II is headed "Space at MC Group's area utilised by JC-MPH Group". There follow four sub-headings entitled PABX Room, Photostat machine, Telex machine and Vault, with meticulous calculations of areas. These four spaces can be seen from the Plan to represent island sites within the curtilage of part A of Item I allocated to the Credit Company.

Item III is headed "Area and Rental to be borne by the MC and JC-MPH Group". Part I is headed "Malayan Credit Group". It sets out the total area in item I, part A, adds to it fifty per cent of the common area in item I, part C, and deducts the area in item II. The result is 3,532 sq. ft. This figure is then adjusted to 3,614 sq. ft. for a reason which does not appear, and costed at $1.80 p.s.f. to produce an apportioned rent and service charge of $6,505.20 payable by the Credit Company. A comparable process was followed in the case of the Chia Company to produce an area of 2,254 sq. ft. adjusted to 2,306 sq. ft. and likewise costed to produce an apportioned rent and service charge of $4,150.80. The two apportionments amount to $10,656 being the total of the monthly rent and service charge to be specified in the lease. These three pages of calculations were marked "Agreed: Tong Chin: 18.10.79". Mr. Tong was the secretary of the Chia Company and he also acted as an alternate director of the Credit Company in place of Mr. Donald Chia, (a nominee of the Chia Company on the board of the Credit Company). It will be convenient to refer to these three pages as "the Rental Apportionment".

At some date in the month of October the Chia Company went into occupation of the parts of the 7th floor allocated to it in the Plan.

On October 25, 1979, the Property Company invoiced the Chia Company for the month of October in the sum of $4,057.20 expressed to be rent at the rate of 1.30 p.s.f. and service charge of 0.50 p.s.f. in respect of an area of 2,254 sq. ft.; this was the unadjusted square footage shown in the Rental Apportionment as allocated to the Chia Company.

The lease was executed on November 30, 1979. It was made between United Overseas of the one part and Malayan Credit and the Chia Company, (called "the Tenants") of the other part. By clauses 1 and 2, United Overseas let to the

Tenants the 7th floor of Malayan Credit House together with seven car park spaces from December 1, 1979 for the term of five years at the monthly rent and service charge which their Lordships have already stated. Clause 3 provided that on or before executing the lease the Tenants should deposit with United Overseas the sum of $31,968, expressed to be equivalent to three months' rent and service charge, as security for the due performance of their obligations under the lease, the money to be refunded on the termination of the lease if such obligations had been duly performed. Clause 4 contained joint and several covenants on the part of the Tenants, including (sub-clause xxvi) a covenant to pay the stamp-duty on the lease and counterpart and the registration and other fees. Clause 6(ii) gave the Tenants an option to renew the lease for a further term of two years at a monthly rent equivalent to $1.43 p.s.f. and a service charge equivalent to 0.55 p.s.f. Under the terms of the Memorandum of Agreement the Tenants also had the option, if the lease were renewed for a further two years, to have a fresh lease for another three years at the same rent and service charge.

On November 21, 1979, the Property Company, in anticipation of clause 3 of the lease, had invoiced the Chia Company in the sum of $12,171.60, being a proportion of the requisite deposit calculated on the basis of 2,254 sq. ft. (the unadjusted measurement of the floor area allocated to the Chia Company in the Rental Apportionment).

On January 8, 1980, the Credit Company invoiced the Chia Company in the sum of $194.76 described as "your share of cost for surveyed plans required for the lease with United Overseas Land Limited". On January 29, 1980, the Credit Company invoiced the Chia Company in the sum of $1,500.85, expressed to be that company's share of the stamp-duty on the lease calculated on the basis of the adjusted floor area shown in the Rental Apportionment, *i.e.*, expressed as 2,306/5,920 x $3,853. It is not in dispute that as from the date of the lease, the rent and service charges were paid by each of the tenants in accordance with the calculations contained in the Rental Apportionment. At the request of the Tenants, each of them was separately invoiced by United Overseas for its due proportion of these charges. Mr. Jack Chia, as chairman of both companies, made use of the chairman's room, the boardroom and the chairman's secretary's room.

Shortly after these events had taken place, the Chia Company disposed of its shareholding in the Credit Company. On April 9, 1980, a board meeting of the Credit Company was held at which Mr. Chia announced that consequent upon such disposal he intended to resign from the board of the Credit Company at the conclusion of the meeting, while continuing as chairman of the Chia Company. This raised a question concerning the future use of the chairman's room, the chairman's secretary's room and the boardroom which, it will be recalled, were part of the Credit Company's allocation of space. Mr. Chia proposed that, for the future, the Chia Company should occupy 3,634 sq. ft. of the 7th floor instead of its existing 2,306 sq. ft. and that the Credit Company should occupy 2,286 sq.ft. instead of its existing 3,614 sq. ft., with the requisite adjustment of rent; in other words, the three rooms should be withdrawn from the allocation to the Credit Company and included within the allocation of the Chia Company. This proposal was rejected by the Credit Company. Thereafter acrimony developed between the two companies as a result of which the Chia Company issued an originating summons on June 11, 1981. The relief sought by the Chia Company was an order for the sale of the lease and of the benefit of the Memorandum of Agreement with liberty for either party to bid; an equal division of the net proceeds of sale; alternatively, an order for an equal partition of the premises.

Under section 39 of the Conveyancing and Law of Property Act (Cap. 268), a body corporate is capable of holding real or personal property in joint tenancy. Under the Supreme Court of Judicature Act, (Cap. 15), the High Court has power to direct a sale instead of a partition in any action for partition of land, and in any cause or matter relating to land, where it appears necessary or expedient to do so.

Their Lordships will deal first with the general principles involved in the case. As the lease itself contains no words of severance, it necessarily takes effect as a grant to the lessees as joint tenants at law. As regards the beneficial interest in the lease in equity, there are three possible situations:

Situation A The lessees at the inception of the lease hold the beneficial interest therein as joint tenants in equity. This will be the case if there are no circumstances which dictate to the contrary. On subsequent severance, the lessees would hold the beneficial interest in equal shares.

Situation B The lessees at the inception of the lease hold the beneficial interest as tenants in common in equity in equal shares.

Situation C The lessees at the inception of the lease hold the beneficial interest as tenants in common in equity in unequal shares.

Situation A is that which is advocated by the Chia Company. The argument is that, in the absence of an express agreement, persons who take as joint tenants at law hold as tenants in common in equity only in three classes of case: first, where they have provided the purchase money in unequal shares; in this case they hold the beneficial interest in similar shares: secondly, where the grant consists of a security for a loan and the grantees were equal or unequal contributors to the loan; again they would hold the beneficial interest in the same shares; and thirdly, where they are partners and the subject matter of the grant is partnership property. See for example, *Snell's* Principles of Equity, 28th edition, pages 37 and 38. The Chia Company contends that the instant case falls into none of these three categories. Therefore it is said that the lessees hold as joint tenants in equity as well as at law, with the result that either party was at liberty to sever the joint tenancy and thus ensure that the beneficial interest was thereafter held in equal shares. Subject to severance, which either party can secure at will, there is no difference between the end result of situation A, and situation B.

Situation C is that which is advocated by the Credit Company. If situation A applies to the present case, it is not in dispute that there has been a severance.

The matter came before the High Court on affidavit evidence. The trial judge held that as the premises were disproportionately divided between the parties, there was a tenancy in common in unequal shares; in other words, situation C. He said that he was fortified in this view by the fact that the stamp-duty was paid in unequal shares, as also the rent. The Court of Appeal reversed the trial judge, holding that there was a joint tenancy which, on later severance, became a tenancy in common in equal shares; in other words, situation A. The Court of Appeal directed a sale.

It seems to their Lordships that where premises are held by two persons as joint tenants at law for their several business purposes, it is improbable that they would intend to hold as joint tenants in equity. Suppose that an account and an architect take a lease of premises containing four rooms, that the accountant uses two rooms, and that the architect uses two rooms. It is scarcely to be supposed that they intend that if, for example, the accountant dies first without having gone through the formalities of a severance, the beneficial interest in the entire premises is to survive to the architect. Their Lordships do not accept that the cases in which joint tenants at law will be presumed to hold as tenants in common in equity are as rigidly circumscribed as the respondent company asserts. Such cases are not necessarily limited to purchasers who contribute unequally, to co-mortgagees and to partners. There are other circumstances in which equity may infer that the beneficial interest is intended to be held by the grantees as tenants in common. In the opinion of their Lordships, one such case is where the grantees hold the premises for their several individual business purposes.

Furthermore, there is no fundamental distinction to be drawn for present purposes between joint tenants who acquire a term of years on payment of a premium and at a token rent, and joint tenants who acquire a term of years on the payment of no premium but at a rack rent. If in the first case the lessees contribute unequally towards the premium, it is plain that they hold the term of years (in the absence of contra-indications) as tenants in common in equity in unequal shares. The premium is the purchase money. In the second case the rent is equivalent to the purchase money. If that is paid in unequal shares, logically the joint tenants should hold the beneficial interest in equity (in the absence of contra-indications) as tenants in common in unequal shares.

There are features in the instant case which appear to their Lordships to point unmistakably towards a tenancy in common in equity, and furthermore towards a tenancy in common in unequal shares:

(1) The lease was clearly taken to serve the separate commercial interests of the Credit Company and the Chia Company.

(2) Prior to the grant of the lease the parties had settled between themselves what space they would respectively occupy when the lease came to be granted. This was roughly 62 per cent to the Credit Company and 38 per cent to the Chia Company.

(3) Prior to the grant of the lease, the parties had

made meticulous measurements of their respective allotted areas, and divided their liability for the rent and service charge in unequal shares in accordance with the respective areas that they would occupy.

(4) Prior to the grant of the lease, the Chia Company was invoiced for its due share of the deposit which was to be paid to the landlord as security under the terms of the lease, the apportionment being made in unequal shares in the like manner. This deposit was a sum which was not to be refundable by the landlord until the termination of the lease. The Chia Company did not dispute the principle of this apportionment.

(5) After the grant of the lease, the Credit Company and the Chia Company paid the stamp-duty and the survey fees in the same unequal shares.

(6) As from the grant of the lease, the rent and service charges were paid in the same unequal shares.

With great respect to the Court of Appeal, their Lordships feel unable to support their conclusion that the parties are beneficially entitled in equal shares. In the opinion of their Lordships, the payment of rent and service charge in unequal shares, the payment of the stamp-duty and the survey fee in unequal shares, and the unequal contributions to the deposit payable under the terms of the lease which was to be outstanding for the whole period of the lease, are comparable to the payment of purchase money in unequal shares. All the circumstances point decisively to the inference that the parties took the premises in equity as tenants in common in unequal shares, those shares being (as a result of the meticulous calculations made by the parties) 3,614 shares to the Credit Company and 2,306 shares to the Chia Company.

Their Lordships are, however, in agreement with the Court of Appeal that a partition of the premises is inappropriate and that they should be sold by order of the court under the Supreme Court of Judicature Act.

The Court of Appeal ordered that the costs of all parties should be paid out of the proceeds of sale of the property. Their Lordships respectfully doubt whether that was an appropriate order to be made in hostile litigation such as the present, since the effect would have been to throw on the winning side (then the plaintiff), one half of the costs of the losing side. If a similar order were made as a result of this appeal, the effect would be to throw on the winning side (substantially the defendant), approximately 62 per cent of the costs of the losing side. In forming a view as to what is the proper order now to be made, their Lordships bear in mind that the appellant company has succeeded on the fundamental question of equal or unequal shares and that the respondent company has succeeded on the subsidiary question of sale or no sale. Their Lordships consider that the respondent company should pay to the appellant company one half of its costs throughout the proceedings.

In the result the order of the Court of Appeal will be varied (i) by substituting at the end of paragraph 2 the proportions which their Lordships have already indicated in place of the word "equally", and (ii) by altering paragraph 3 of the order so that the respondent company pays one half of the appellant company's costs in the High Court, the Court of Appeal, and before the Board.

Order accordingly.

Solicitors: *Turner Kenneth Brown; Coward Chance.*

YEAP SEOK PEN v. GOVERNMENT OF THE STATE OF KELANTAN

[P.C. (Lord Keith of Kinkel, Lord Templeman, Lord Griffiths, Lord Oliver of Aylmerton and Lord Goff of Chieveley) January 22 & February 24, 1986]

[Privy Council Appeal No. 47 of 1983]

Land Law – Land Acquisition – Declaration that land needed for a public purpose – Land needed for Kelantan Foundation – Whether land required for a public purpose – Whether acquisition was made in bad faith – Land Acquisition Act, 1960, s.8(3).

This was an appeal from the decision of the Federal Court reported at [1982] 2 M.L.J. 202. The appellant is a Malaysian of Chinese origin. She entered into an agreement to buy the land and shophouse in which her father had carried on a goldsmith's business as tenant for some 45 years. The land was outside a Malay reservation area and it could be transferred between natives of Kelantan, without the consent of the Ruler in Council. Both the appellant and her vendor are natives of Kelantan. The transfer was registered on July 26, 1980. Before the registration was completed the respondent took steps to acquire the land on behalf of the Kelantan Foundation. A declaration of intended acquisition was published on October 23, 1980 specifying that the land was needed for "office and commercial space for the Kelantan Foundation". The Kelantan Foundation is an educational foundation established by statute and it